



Federal Communications Commission
Washington, D.C. 20554

FEB 13 1998

EX PARTE OR LATE FILED

The Honorable Gordon H. Smith
United States Senate
121 SW Salmon, Suite 1250
Portland, OR 97204

RECEIVED

FEB 20 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Senator Smith:

Thank you for your letter dated November 17, 1997, on behalf of your constituents, Larry Griffith, President Councilor, Baker City, Oregon, G.A. Lavios, Director, Planning and Development, Cottage Grove, Oregon, Steve Bryant, City Manager, Albany, Oregon and Mayor Bill Klammer, Lake Oswego, Beaverton, Oregon, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in their communities. Your constituents' letters refer to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, your constituents' letters, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

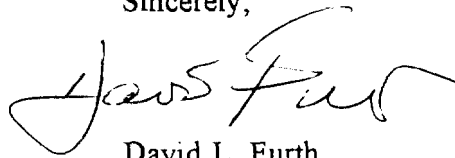
The Honorable Gordon H. Smith

2.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth". The signature is fluid and cursive, with the first name "David" and last name "Furth" clearly distinguishable.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

GORDON H. SMITH
OREGON

COMMITTEES
BUDGET
ENERGY AND NATURAL RESOURCES
FOREIGN RELATIONS

United States Senate

WASHINGTON, DC 20510-3704

November 17, 1997

mmB
97-182
7420

Ms. Karen Kornbluh
Director, Office of Legislative Affairs
Federal Communications Commission
1919 M Street NW, Room 808
Washington, DC 20554

Dear Ms. Kornbluh:

Enclosed please find a copies of a number of letters I have recently received from municipalities in Oregon regarding the proposed "Federal Zoning Commission" As you will note, they have all requested my assistance in seeing that this plan as proposed is not implemented.

In an effort to provide my constituents with an appropriate response, I would appreciate your comments on the several issues raised. I look forward to a reply at my Portland office at One World Trade Center, 121 SW Salmon, Suite 1250, Portland, Oregon 97204.

Thank you in advance for your kind attention to this inquiry.

With kind regards.

Sincerely,



Gordon H. Smith
United States Senator

GS:jr



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for livable
Oregon
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League of Oregon Cities
Local Government
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Salem, OR 97301

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October 29, 1997

Senator Gordon Smith
Dirksen Building SD 359
Washington, D.C. 20510

Dear Senator Smith:

The Federal Communications Commission is considering rules that would preempt local zoning of cellular, radio, and television towers. The FCC is proposing that it usurp these authorities and handle local zoning issues on the federal level. Congress and the federal courts have long recognized that zoning is a local issue that must be handled at the city and county levels. We urge you to contact the FCC immediately and object to these proposals (MM 97-182, WT 97-197, and DA 96-2140).

In the 1996 Telecommunications Act, Congress affirmed local zoning authority over cellular towers. The FCC was to stop all attempts to federally regulate zoning decisions. In spite of this Congressional opinion, the FCC is now attempting to preempt local zoning authority in three separate rulemakings.

Radio and Television Towers:

This is the most onerous of the three proposals. The proposed rule (MM 97-182) was drafted by the National Association of Broadcasters and is being proposed as an FCC rule to regulate the siting of new broadcast towers. It imposes arbitrary and unreasonable timelines for municipalities to act on any local permit application related to broadcast towers. If a city is not able to take action within this time frame the request is deemed to be automatically granted. This could easily result in overriding local safety requirements. Appeals of this process would be required to go through the FCC rather than the court system.

This proposed rule would have a very negative impact on the cities of Oregon. Our extensive zoning and land use regulations would become moot. Cities in Oregon have worked cooperatively with cellular providers to site towers across the state, and would expect to do the same for the siting of new broadcast towers. We understand the importance of expedient siting of these towers, but not at the expense of reasonable and established processes, citizen input, and local zoning authority.

Cellular Tower Radiation:

In the 1996 Telecommunications Act, Congress gave local governments zoning authority over cellular towers with the sole exception that municipalities cannot regulate radiation from cellular radiation if it is within limits that are set by the FCC. Now the FCC is attempting to use its authority over cellular tower radiation to reverse local decisions that it determines are "tainted" with radiation concerns.

Senator Gordon Smith
October 29, 1997
Page Two

It is likely that many cities will hear concerns from their residents about potential radiation from these towers; city councils cannot prohibit these types of comments during public hearings. The FCC is proposing rules that would allow them to take over decision-making about specific towers if citizens raise these issues during siting decisions. Even when cities made perfectly valid decisions, on grounds not related to radiation, the FCC is proposing to preempt local decisions:


Cellular Tower Siting Moratoria:

For many reasons, it is unnecessary for the FCC to propose to preempt all local moratoria on the siting of new cellular towers. First, the cellular industry is no longer in its infancy. Towers in Oregon and elsewhere are numerous, and several wireless providers have indicated that they expect "very little" additional expansion of their services. Second, Congress specifically authorized local, not FCC, zoning control over these towers. Third, many court cases have upheld the authority of local governments to impose moratorium to assist them in developing appropriate zoning regulations. The case of Medina, Washington, is most notable of these.

We strongly urge you to contact the new FCC Chair, William Kennard, and Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell, and Gloria Tristani to express your opposition to their proposals to intrude on local zoning authority in these cases. We also request that you oppose any effort by Congress to grant the FCC federal zoning powers that will preempt local zoning authority.

Barrie Tabin, National League of Cities (202-626-3194), Eileen Huggard, the National Association of Telecommunications Officers and Advisors (703-506-3275), and Cheryi Maynard, American Planning Association (202-872-0611) are very knowledgeable about these FCC proposals. We urge you to contact these experts for other information about these issues.

Sincerely,



Larry Griffith
President
Councilor, Baker City

LG:sh:sw

c: Oregon Congressional Delegation
see attached list



CITY OF
**COTTAGE
GROVE**

400 Main Street, Cottage Grove, Oregon 97424

October 30, 1997

OFFICE OF PLANNING AND DEVELOPMENT

Senator Gordon H. Smith
SD B-34
Washington, DC 20510

Senator Ron Wyden
295 Russell
Senate Office Building
Washington, DC 20510

Representative Peter DeFazio
2134 Rayburn House Otr. Bldg.
Washington, DC 20515

Dear Senator Smith, Senator Wyden and Representative DeFazio:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rule makings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rule makings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rule making the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

PROMOTE • FOSTER • ESTABLISH • CARE • ENCOURAGE

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: it sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structure known to man - over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140, second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-6260-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

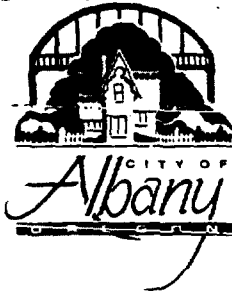
Very truly yours,



G.A. Lavios, Director
Planning and Development

GAL/ceb

c.c. (see attached list)



CITY HALL
333 BROADALBIN SW
P.O. BOX 490
Albany, OR 97321-0144
(541) 917-7500

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October 28, 1997

The Honorable Gordon Smith
United States Senate
Washington, DC 20510

Dear Senator Smith:

I am writing to ask you to contact the Federal Communications Commission (FCC) to urge them to stop work on regulations that would preempt local zoning of cellular, radio, and TV sites. In the 1996 Telecommunications Act, Congress expressly reaffirmed local governments' control over local zoning decisions. Despite the clarity of this provision, the FCC is attempting to preempt local zoning authority in two rule makings that are of concern to the City of Albany.

Abuse of the "radiation" preemption. Congress preserved local zoning authority over cellular sites in the 1996 Telecommunications Act with the exception that cities cannot regulate the radiation from these sites. The FCC is using this very narrow authority to review and reverse cellular zoning decisions that the FCC has determined are "tainted" by radiation concerns, even if that decision is otherwise permissible. In fact, the FCC is saying that it does not need to be bound by the stated reasons for a decision given by a municipality.

As I am sure you know from your public meetings around the state, no local government can prevent citizens from mentioning issues that concern them in a public hearing; and many local citizens may be concerned about radiation. In its rulemaking, the FCC is saying that if any citizen even raises this issue, this is sufficient grounds for a cellular zoning decision to be potentially reversed by the FCC, even if the local decision was not made based on the citizens' community.

Radio/TV Tower Rule. The FCC's proposed rule on radio and TV towers is bad. It will set a limit of 21 to 45 days for municipalities to act on any local permit (zoning, building permit, etc.). Any permit would be automatically deemed granted if the local government doesn't act in this time frame, even if the application is incomplete or violates local law. This will also violate important safeguards for our citizens, especially those that ensure that adjacent property owners are given the right to comment on certain types of land use actions.

This proposed rule is astonishing when considering the nature of these structures. Many broadcast structures are extremely large, and they will have a severe impact on the communities they are sited in. There is no justification for this short time frame, especially because states like Oregon already limit the length of time jurisdictions can spend on a permit. However, Oregon law recognizes that the impacts of development decisions on communities, the environment, and the economy need to be researched and considered before a proposal is approved or rejected; and the "120-day rule" should not be circumvented for important decisions on facilities like radio and TV antennas.



The Honorable Gordon Smith

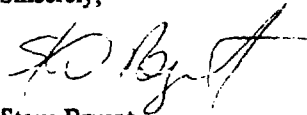
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October 28, 1997

There are three things the City of Albany would urge you to do to ensure that communities retain their right to determine their own futures. First, Albany urges you to oppose any legislation that would increase the FCC's power over local land use decisions. Second, Albany recommends that you sign the "Dear Colleague" letter to the FCC being circulated on this issue. Third, Albany asks that you write to the new FCC Chairman William Kennard to stop actions that violate the 1996 Telecommunications Act by intruding on local zoning authority, particularly actions on cases WT 97-197, MM Docket 97-182, and DA 96-2140.

Thank you for your attention to our concerns.

Sincerely,



Steve Bryant
City Manager

SWB:mjb:kg

c: Sarah Hackett, League of Oregon Cities
Barrie Tabin, National League of Cities
Helen Burns Sharp, Community Development Director
Martha Bennett, Assistant to the City Manager

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METROPOLITAN AREA COMMUNICATIONS COMMISSION

Cable TV Franchise Regulation • Telecommunications Service and Support • Public Communications Network (PCN)

October 28, 1997

Senator Gordon Smith
Dirksen Office Building, Room 359
1st and C Streets
Washington, DC 20510

RE: FCC SEEKS PREEMPTION OF LOCAL GOVERNMENT AUTHORITY

Dear Gordon:

I serve as Chair of the Metropolitan Area Communications Commission (MACC), a local government agency representing Lake Oswego, 14 other cities, and Washington County in telecommunications franchising and regulation. I am writing you on behalf of our member jurisdictions regarding the Federal Communications Commission (FCC) and its attempt to preempt local zoning of cellular radio and television towers, by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the traditional rights of local governments, and the intent of Congress. In the 1996 Telecommunications Act Congress expressly reaffirmed local zoning authority over cellular towers, it told the FCC to stop all rulemakings in their attempt to become a Federal Zoning Commission for such towers. Despite this instruction the FCC is now attempting to preempt local zoning authority in three different rulemakings.

CELLULAR TOWERS - RADIATION - Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act, with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is dismissing the direction of Congress with its current action, and with implementation of this rule the FCC could review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns even if the decision is otherwise permissible. In fact, the FCC is saying that it can "second guess" what the true reasons are for a municipality's decision, they need not be bound by stated reasons given by a municipality, and they do not need to wait until a local planning decision is final before they act!

As you know, some of our citizens are very concerned about the radiation from cellular towers and we obviously cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking, the FCC says that, if a citizen raises this issue, that is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed. That could be the case even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds.

CELLULAR TOWERS - MORATORIA - The FCC is also proposing a rule banning the legitimate moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate increase in the numbers of tower requests. Again, this violates the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

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RADIO/TELEVISION TOWERS - The FCC's proposed rule on radio and TV towers is also bad policy. It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning, or other). Any permit request is automatically deemed granted if the municipality does not act in this timeframe, even if the application is incomplete or clearly violates local law. The FCC's proposed rule would also prevent municipalities from considering the impact such towers have on property values, the environment, or aesthetics. Even safety requirements could be overridden by the FCC! All appeals of zoning and permit denials would go directly to the FCC, not to the local courts. The FCC claims these changes are needed to allow television stations to switch quickly to High Definition Television. The Wall Street Journal and trade magazines, however, state there is no way the FCC and broadcasters will meet the current schedule, so there is no need to violate the rights of citizens and municipalities just to meet an artificial deadline.

You are well aware of the local public furor raised when communications towers and antennas are sited in the area. Local governments have successfully managed these processes in the past, negotiating fair compromises for both citizens and communications providers. There is no reason why local governments cannot continue to perform this role in a fair and thoughtful manner. These actions are nothing more than a power grab by the FCC to become the Federal Zoning Commission for cellular and broadcast towers (a planning role for which they have no expertise or experience). It is clearly an unneeded interference with the legitimate role of local governments to manage and control planned use of their communities.

PLEASE DO THE FOLLOWING THREE THINGS TO STOP THE FCC:

1. Write the new FCC Chairman, William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell, and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182, and DA 96-2140.
2. Join in the "Dear Colleague Letter" being prepared to go to the FCC from members of Congress.
3. Oppose any effort by Congress to grant the FCC power to act as a "Federal Zoning Commission."

I would be happy to discuss our concerns with you on this important matter. In addition, the following people at national local government organizations in the Washington DC area are familiar with the FCC's proposed rules and the municipalities' objections to them: Barrie Tabin, National League of Cities (202-626-3194); Eileen Huggard, National Association of Telecommunications Officers and Advisors (703-506-3275); Robert Fogel, National Association of Counties (202-393-6226); Kevin McCarty, U.S. Conference of Mayors (202-293-7330); and Cheryl Maynard, American Planning Association (202-872-0611).

Thank you for your assistance on this important local government authority matter.

Sincerely,


Bill Klammner
Mayor, Lake Oswego
Chair, Metropolitan Area Communications Commission

cc: Kurt Pfothnauer, Chief of Staff
Eileen Huggard, NATOA
MACC Commissioners

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